Public Prosecutor v Zainal Ariffin bin Abu Bakar

HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 45–52 OF 2002
KN SEGARA J
29 NOVEMBER 2006

Criminal Law — Penal Code — s 34 — Common intention — Culpable homicide not amounting to murder — Conviction under s 304(b) — Whether multiple injuries inflicted by accused or any of two persons at large

The accused together with SP3 went into the house of SP4 on 14 December 2001 between 7.30pm and 8.00pm. Evidence indicated that SP3 saw a van at the house of SP4. SP3 did not enter the house of SP4. SP3 did not meet SP4 in the house. There was no evidence as to whether SP4 was in the house at that time. SP3 saw two persons whom he did not know in the van. The accused directed SP3 to enter the van. SP3 entered the van together with the accused. The van was driven around in the vicinity of Bukit Botak and the deceased was spotted at a public telephone. There was evidence that the accused and one of the persons in the van dragged the deceased into the van from the public telephone and assaulted him in the van. SP3 was then dropped off at a road junction. About 45 minutes later, the van returned, without the deceased inside the van but with only the accused and the two unidentified persons in the van. SP3 entered the van and proceeded back to SP4's house from where accused and SP3 were on a motorcycle to a food stall area known as BBS junction. Although the doctor in his post-mortem report had concluded that the deceased's death was due to an infliction of a sharp weapon resulting in massive bleeding, there was, however no evidence who had inflicted the multiple injuries that caused the 'massive bleading'. Based on the above scenario, the prosecution charged the accused with the murder of the deceased and the court was urged by the prosecution to find the accused guilty of murder under s 302 of the Penal Code ('the Code'). However, the prosecution's case was premised entirely on circumstantial evidence. The issue for the court was whether the injuries found on the deceased, as per the post-mortem report were in fact inflicted by the accused or any of the two persons at large with a common intention.

Held:

(1) Although the accused had dumped the deceased in Ulu Yam on the night of 14 December 2001, the court was unable to make a finding, as per the post-mortem report that the injuries caused with a sharp weapon were inflicted by the accused or any of the two unidentified persons at large with or without a common intention. On the evidence, the accused had assaulted the deceased (at least with his hands) at the time he dragged him into the van and whilst travelling in the van before dropping off SP3 at the road junction. Although

there maybe grounds for suspecting that the accused could have inflicted the injuries attributed to a sharp weapon and therefore, had intention to kill the deceased, nevertheless, suspicion alone was not good enough to infer the requisite mens rea and find the person guilty of murder (see para 30).

(2) On a balance of probabilities, the court was satisfied that the accused did not intend to cause death but nevertheless the act of dumping the deceased in Ulu Yam and leaving the deceased helpless on the night of December 14 after being assaulted was likely to cause death. In such circumstances, the accused was found guilty and convicted of culpable homicide not amounting to murder punishable under s 304(b) Penal Code (see para 31).

[Bahasa Malaysia summary

Tertuduh bersama dengan SP3 telah memasuki rumah SP4 pada 14 Disember 2001 antara jam 7.30 hingga 8.00 malam. Keterangan menunjukkan bahawa SP3 telah melihat van di rumah SP4. SP3 tidak memasuki rumah SP4. SP3 tidak berjumpa dengan SP4 di rumah. Tiada keterangan sama ada SP4 berada di rumah pada masa tersebut. SP3 telah melihat dua orang yang tidak diketahuinya di dalam van. Tertuduh telah mengarahkan SP3 untuk memasuki van. SP3 telah memasuki van bersama dengan tertuduh. Van telah dipandu sekeliling perumahan Bukit Botak dan si mati telah dikenal pasti berdekatan pondok telepon. Terdapat keterangan bahawa tertuduh dan salah seorang daripada mereka dalam van telah mengheret si mati ke dalam van dari pondok telepon dan memukulnya. SP3 kemudiannya telah ditinggalkan di simpang jalan. Empat puluh lima minit kemudiannya, van tersebut telah kembali dengan si mati di dalamnya tetapi hanya dengan tertuduh dan dua orang yang tidak dikenali di dalam van. SP3 telah memasuki van dan telah kembali ke rumah SP4 di mana tertuduh dan SP3 berada dalam motosikal ke tempat gerai makan dikenali sebagai BBS simpang. Walaupun doktor dalam laporan bedah siasatnya telah menyatakan bahawa kematian si mati adalah disebabkan oleh tikaman satu objek yang tajam yang telah menyebabkan pendarahan yang banyak, akan tetapi tiada keterangan siapa yang telah menyebabkan kecederaan pelbagai yang sejurusnya menyebabkan pendarahan berlebihan. Berdasarkan senario di atas, pendakwa raya telah menuduh tertuduh dengan pembunuhan si mati dan mahkamah diseru oleh pendakwa raya untuk memastikan tertuduh bersalah bagi pembunuhan di bawah s 302 Kanun Acara Jenayah. Walaubagaimanapun, kes pendakwa raya adalah berdasarkan kepada keterangan ikut keadaan. Isu untuk mahkamah adalah sama ada kecederaan atas si mati seperti yang ditunjukkan oleh laporan bedah siasat sememangnya telah disebabkan oleh tertuduh atau mana-mana dua orang dengan niat yang sama.

Diputuskan:

(1) Walaupun tertuduh telah menghumban si mati di Ulu Yam pada malam 14 Disember 2001, mahkamah tidak boleh membuat satu penemuan seperti dalam laporan bedah siasat bahawa kecederaan yang disebabkan oleh objek yang besar disebabkan oleh tertuduh atau mana-mana dua orang yang belum dikenal pasti dengan atau tanpa niat yang sama. Atas keterangan, tertuduh

telah memukul si mati (sekurang-kurang dengan tangannya) pada masa mengheretnya ke dalam van dan semasa perjalanan dalam van sebelum meninggalkan SP3 di simpang jalan. Walaupun wujud alasan-alasan mengesyaki bahawa tertuduh mungkin menyebabkan kecederaan yang diakibatkan oleh satu objek besar dan oleh itu mempunyai niat untuk membunuh si mati walaubagaimanapun syak wasangka sahaja tidak mencukupi untuk mewujudkan mens rea dan memastikan tertuduh bersalah bagi kesalahan membunuh (lihat perenggan 30).

(2) Di atas imbangan kebarangkalian, mahkamah berpuas hati bahawa tertuduh tidak berniat untuk menyebabkan kematian tetapi tindakan menghumban si mati ke dalam Ulu Yam dan menjadikan si mati tidak berupaya pada malam 14 Disember selepas dipukul kemungkinan besar boleh menyebabkan kematian. Dalam keadaan sedemikian, tertuduh didapati bersalah dan disabitkan kesalahan homisid tidak bersamaan pembunuhan di bawah s 304(b) Kanun Acara Jenayah (lihat perenggan 31).]

Notes

For cases on common intention, see 4 *Mallal's DIgest* (4th Ed, 2003 Reissue) paras 1131–1132.

Legislation referred to

Criminal Procedure Code s 402A(2)
Penal Code s 304(b)

Wan Shaharuddin bin Wan Ladin (Jabatan Peguam Negara) bagi pihak pendakwa raya.
Pritam Singh Doal (Pritam Singh Doal & Co) bagi pihak tertuduh.

KN Segara J:

[1] On 19 December 2001, at about 2.30pm, ASP Zool Hilmi bin Husin ('SP1') received information that a body was found floating in a lake at Empangan Batu. He proceeded to the scene with a police photographer, Yusoh bin Supraman ('SP5'). When SP1 arrived at the scene at about 2.45pm, he saw a body floating in the water very close to the bank of the lake. There was a dirt track, passable by a van, close to the bank of the lake. The track was about 2 meters from the bank of the lake where the body was seen by SP1. The track starts from a metal road at Empangan Batu. This metal road is about 20 meters from where the body was found and 1 kilometer from the Ulu Yam/ Empangan Batu road junction.

[2] Che Muda bin Puteh ('SP7'), the father of the deceased, Muhamad Rafee bin Che Muda was near the body when SP1 arrived at the scene. SP7 helped the police lift the body off the bank and water. The body was sent to Hospital Kuala Lumpur and a post-mortem was carried out by Dr Abdul Rahman Yusuf in the presence of Hasnah bt Sabu ('SP6'), the mother of the deceased. The body was in a decomposed state and the cause of death, according to Dr Abdul Rahman Yusuf was 'Massive blood loss due to multiple incised and state wounds' (see exh P4).

[3] Dr Abdul Rahman was not called to give evidence on the post-mortem of the decomposed body. However, SP1 testified that Dr Abdul Rahman gave him a specimen taken from the deceased's body placed inside a bottle, marked A3 (exh P11) which was sent to the chemist, Seah Lay Hong (SP11). A3 was a tissue specimen. Blood samples were taken from Hasnah bt Sabu ('SP6') and Che Muda bin Puteh ('SP7'), the parents of Muhamad Rafee bin Che Muda by Dr Mohamad Iqbal ('SP10'). The blood samples were appropriately labelled and finally sent to the chemist, SP11. DNA profiling was carried out by the chemist on the blood samples of SP6, SP7 and the tissue specimen from the deceased's body collected at the post-mortem by Dr Abdul Rahman. SP11 testified that the DNA results indicated that SP6 and SP7 are the biological parents of the source of tissue, specimen A3. Therefore, SP6 and SP7 had rightly claimed the decomposed body, as that of their son, Muhamad Rafee bin Che Muda who had not returned home after they had last seen him alive on 14 December 2001, at about 10.30pm.

[4] The death of Muhamad Rafee bin Che Muda, therefore is not in dispute. It is also not in dispute that the decomposed body found at about 2.45pm on 19 December 2001 at the bank of the lake is that of Muhamad Rafee bin Che Muda. The cause of death of Muhamad Rafee bin Che Muda is also not in dispute. As the doctor who performed the post-mortem did not testify, there is no medical evidence or opinion as to the actual date and time of death of Muhamad Rafee bin Che Muda, bearing in mind that he was last seen alive on the night of 14 December 2001 between 8.00pm and 10.30pm and his decomposed body was only recovered at about 2.45pm on 19 December 2001.

[5] Muhammad Hafiz bin Ishak ('SP3') was about 15 years old in the year 2001. He knew Shashiliana ('SP2'), Hanapi ('SP4'), Muhamad Rafee ('the deceased') and Zainal Ariffin ('the accused'). He testified that the accused was his friend and he had known him for about four to six months before 14 December 2001. He had come to know SP2 about three to four months before 14 December 2001 and the deceased only about one to two months before 14 December 2001.

[6] There was evidence that the accused together with SP3 went to the house of SP4 on 14 December 2001 between 7.30pm and 8.00pm. There was evidence that SP3 saw a van at the house of SP4. SP3 did not enter the house of SP4. SP3 did not meet SP4 in the house. There was no evidence as to whether SP4 was in the house at that time. SP3 saw two persons whom he did not know inside the van. The accused directed SP3 to enter into the van. SP3 entered the van together with the accused. The van was driven around in the vicinity of Bukit Botak and then the deceased was spotted at a public telephone. There was evidence that the accused and one of the persons in the van dragged the deceased into the van from the public telephone and assaulted him inside the van. SP3 was then dropped off at a road junction. About 45 minutes later, the van returned, sans the deceased inside the van but with only the accused and the two unidentified persons inside the van. SP3 entered the van and the van proceeded back to SP4's house from where accused and SP3 proceeded on a motorcycle to a food stall area known as BBS junction.

[7] There was no evidence when and where the 'multiple incised and state wounds' were inflicted on the deceased whether on a single occasion or on several occasions, whether at the same place or different places spread over a period of time after he was last seen alive on 14 December 2001 by SP3 and the discovery of his body on 19 December 2001. Although the doctor in his post-mortem report ('P4') had concluded that the multiple injuries were 'due to sharp weapon (cutting object) causing massive bleeding', there was neither evidence of any sharp weapon found anywhere nor was any weapon produced in court. There was no evidence (circumstantial or direct) as to when the 'massive bleeding' started. There was no evidence of any blood stains found or seen on the person, clothes or belongings of anybody last known to have been in the company of the deceased, that is, SP3, the accused and two other unidentified persons. There was no evidence that the van in which the deceased had been taken on a terror ride had any blood stains when the accused returned in the same van to fetch SP3 at the junction where he had been dropped off 45 minutes earlier. As the doctor who performed the post-mortem did not give any oral evidence, there was also no clear description of the weapon likely to have been used to inflict the injuries. There was no evidence who had inflicted the multiple injuries that caused the 'massive bleeding'.

[8] It is under the scenario outlined above that the prosecution charged the accused with the murder of the deceased and the court was invited and urged by the prosecution to find the accused guilty of murder of the deceased, Muhamad Rafee bin Che Muda under s 302 of the Penal Code.

[9] It is without doubt that the prosecution's case against the accused is premised entirely on circumstantial evidence. The accused was nevertheless called upon to enter his defence at the close of the prosecution's case, as the court was satisfied there was a prima facie case, albeit tenuous.

[10] The accused had elected to give evidence on oath. His defence was essentially a denial, appearing to take the cloak of an alibi. After the close of the case for the defence and upon a re-evaluation of the prosecution's case, thereafter, the accused was found guilty and convicted of culpable homicide not amounting to murder punishable under s 304 (b) Penal Code. He was sentenced to ten years imprisonment.

[11] The case for the prosecution is briefly as follows:

[12] SP6 and SP7 (the mother and father of the deceased, respectively) had last seen the deceased alive between 7.00pm and 8.00pm on 14 December 2001 based on their testimony in court. According to SP6, after the deceased left the house at about that time he did not return home that night or the next day. On 16 December 2001, SP6 lodged a 'missing persons' report (exh P7). On 19 December 2001, SP7 helped the police lift the body of the deceased from the lake, at Empangan Batu and he identified the body as that of his missing son based on his recognition of the clothes, as that worn by the deceased when he left the house on 14 December 2001.

[13] Shashiliana bt Ali Hannapiah ('SP2') was a young girl of 14 years in the year 2001. She claimed that the deceased who was then about 18 years old was her 'lover'

('*...hubungan saya bersama Muhamad Rafee adalah sebagai sepasang kekasih*') whereas the accused and Hanapi bin Kadir, ('SP4') aged 19 years and 28 years, respectively were her 'adopted brothers' (abang angkat).

[14] SP2 testified in examination-in-chief that the accused told her that she should not befriend the deceased and that she should not meet him [*'OKT memberitahu saya agar saya tidak berkawan dengan Muhamad Rafee. Dia suruh saya jangan berjumpa dengan Muhamad Rafee (si mati)'*]. Under cross-examination she testified that she first came to know the accused in April 2001 ('Saya mula kenal OKT pada bulan empat tahun 2001'). SP2 was never challenged in cross-examination that the accused did not tell her not to befriend the deceased or not to meet him.

[15] SP3 testified that on 14 December 2001, at about 7.30pm, he was in his house when the accused came on a motorcycle and invited him to go to SP4's house. He accepted the invitation and upon arriving at SP4's house he saw a parked van with two unidentified persons inside the van. SP4 then invited SP3 to enter the van for a spin. One of the unidentified persons in the van drove the van. SP3 sat in front of the van, that is beside the unidentified van driver, whilst the accused sat at the back of the van together with another of the unidentified persons seen earlier seated inside the van. The van then proceeded in the direction of Bukit Botak.

[16] At about 8.00pm, SP3 and the accused spotted the deceased using a public phone. The van driver then brought the van close to the deceased at the public phone. Then, the accused and the unidentified person who was with him at the back of the van, dragged the deceased into the mid-back portion of the van. SP3 testified that when the van started to move away from the public phone, the deceased, the accused and the unidentified person were seen struggling. He also saw that the neck and hand of the deceased had been gripped by the accused and the unidentified person. He also saw them assault the deceased ('Selain mereka bergelut saya lihat leher dan tangan Muhamad Rafee digrip oleh OKT dan seorang lagi. Saya juga lihat Muhamad Rafee dipukul oleh OKT dan seorang lagi tersebut').

[17] SP3 testified that at about 9pm when the van reached the Ulu Yam or Empangan junction, he was dropped off at the said junction. At that time, the accused, the two unidentified persons and the deceased were still inside the van. SP3 testified that after he was dropped off at the junction, the van proceeded towards the direction of Ulu Yam. About 45 minutes later, the van returned to the place where he was dropped off. He got into the van and inside the van he only saw the accused and the (same) two unidentified persons. He asked the accused on the whereabouts of the deceased. The accused replied that the deceased had 'disappeared or gone missing' ('OKT menjawab Muhamad Rafee sudah tidak ada.'). They returned in the van to SP4's house. SP3 testified that from there, he and the accused went on accused's motorcycle to BBS Junction.

[18] There is no evidence as to what the two unidentified persons did after they returned to SP4's house that night after bringing back the accused and SP3. They certainly did not go to BBS junction together with SP3 and the accused. Did the two unidentified persons return in the van to Ulu Yam and/or the vicinity

of the lake at Empangan Batu from SP4's house and inflict the injuries to the deceased with a sharp cutting weapon? Where is the sharp cutting weapon? What has happened to the van?

[19] BBS junction is situated in Bandar Baru Selayang and was frequented by SP2 and SP4 in December 2001. There are food stalls at BBS junction. SP3 testified that on 14 December 2001, he arrived at BBS junction at about 11.00pm together with the accused on accused's motorcycle from SP4's house, upon their return from the van trip.

[20] SP3 testified that at BBS junction he met SP4 and SP2. He sat at a table with SP2 whilst accused was with SP4 outside the restaurant.

[21] SP4 testified that on 14 December 2001, at about 10.30pm, he was at BBS junction. At about 11.30 pm, the accused and SP3 met him, whilst he was still at BBS junction. He testified that the accused informed him that he had dumped 'that person' in Ulu Yam ('OKT memberitahu saya dia telah humban orang itu di Ulu Yam'). SP4 asked him whom he had dumped. The accused answered 'it is that person' and he did not ask him anything else ('Saya tanya dia siapa yang dia telah humban. Dia jawab, 'Adalah orang itu'. Saya tidak tanya dia apa-apa lagi.').

[22] I have considered the accused's testimony and that of his witnesses carefully.

[23] Briefly, the accused's testimony was that he did not go to the house of SP3 on 14 December 2001, at about 7.30 pm and thereafter, to the house of SP4 together with SP3 and get into a van with two other unknown persons because he was at home painting his house. On the same premise that he was at home painting his house, he denied that he was in the van with SP3 on 14 December 2001, at about 8.00 pm, when the deceased was dragged into the van when he was using a public telephone. Again, on the same premise that he was at home painting his house, he denied that he had assaulted the deceased in the van during the journey to the Empangan Batu junction and Ulu Yam on 14 December 2001, between 8.00pm and 9.00pm. The accused did not drop off SP3 at the Empangan Batu junction on 14 December 2001, at 9.00pm because he was at home painting his house. The accused did not return to the junction to pick up SP3 on 14 December 2003, at about 9.45pm because at that time he was at his home painting his house. The accused did not inform SP3 at about 9.45pm, on 14 December 2001 that the deceased 'sudah tidak ada' because he was at home painting his house. The accused did not go to BBS junction on 14 December 2001, at 11.30pm, together with SP3 and there meet SP4 because he was at home painting his house. The accused did not inform SP4 'Saya ada humban orang itu' at BBS junction on 14 December 2001, at 11.30pm because he was at home, at that time, painting his house. In essence, the accused's testimony is that he did not go anywhere, on 14 December 2001 because he was at home from morning till night, painting his house in preparation for Hari Raya Puasa.

[24] The accused called two witnesses to testify as to his whereabouts on 14 December 2001 from morning till evening. They were his parents, that is, his father (DW2) and his mother (DW3). They testified that 14 December 2001 was a

day during the fasting month and that the accused broke the fast at home and that DW3 had cooked the food to break the fast. They testified that the accused never left the house that day, and even if he did, it was only to the surau nearby for terawih prayers and that he had returned home, thereafter, and never left the house. They testified that the accused was at home on that day, painting the house, while DW2 assisted him.

[25] Upon a careful consideration of the testimony of the accused, I am of the view the defence of the accused is really one of a denial that he committed the offence, rather than an alibi, per se. Therefore, I shall not address the issue on the failure of the accused to have given a proper notice (D15) in full compliance of s 402A(2) CPC and the consequent inadmissible evidence of the alibi witnesses.

[26] Although there may be some minor discrepancies in the evidence of SP2, SP3 and SP4, I am entirely satisfied that these discrepancies do not in any way render the entire evidence of these witnesses unreliable. The discrepancies, if any, arise from perception and lack of focus, urgency, or need for attention to a particular point currently raised with the witness in court but not on the very day it occurred, for example, on the issue whether the accused (OKT) was at BBS junction on 14 December 2001. Now, SP2 had testified under examination-in-chief:

> Pada 14 December 2001 jam lebih kurang 11.30 malam saya berada di BBS junction bersama Hanapi. Saya tidak tahu dimana Mohamad Rafee (simati) ketika itu. Pada ketika itu Hanapi bin Kadir bersama saya di BBS junction. Selain mereka ada kawan-kawan lain di BBS junction pada waktu itu. *Pada ketika itu saya tidak tahu dimana OKT berada.*
>
> Pada 14 December 2001 saya berada di BBS junction jam 11.30 malam sehingga 1.00 pagi 15 December 2001.
>
> *Diantara jam 11.30 malam sehingga 1.00 pagi tersebut OKT tidak datang ke BBS junction.* Sekarang saya kata 'saya kurang pasti'.
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> Then under cross-examination:
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> Saya mula kenal OKT pada bulan empat tahun 2001.
>
> Saya tak kenal kawan-kawan yang berada di BBS junction pada malam 14 December 2001. *Saya tidak pasti sama ada OKT berada di situ pada malam itu.*Saya tak pasti siapa berada disana.
>
> Saya tidak tahu OKT ada di rumah pada 14 December 2001.
>
> And under re-examination:
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> Selain daripada Hanapi dan Hafiz saya tidak pasti nama orang-orang lain yang berada di BBS junction pada 14 December 2001...

[27] I am entirely satisfied based on the testimony of SP3 that on the night of 14 December 2001, at about 8.00pm, SP3 was in the van together with the accused and two other unidentified persons when the accused spotted the deceased at a public phone, whereupon the accused and one of the two unidentified persons dragged the deceased into the van and assaulted him and thereafter dropped off SP3 at a road junction and returned 45 minutes later without the deceased in the van to fetch SP3.

[28] I also accept the testimony of SP4 that the accused came to BBS junction and informed him that he had dumped 'that person' in Ulu Yam ('OKT memberitahu saya dia telah humban orang itu di Ulu Yam). Although the information given by the accused to SP4 is not an admission that the accused had dumped the deceased in Ulu Yam, what are the inferences that can be drawn from that information given by the accused to SP4 (soon after returning from a trip where the accused had dragged the deceased into a van, assaulted him, proceeded with the deceased into the van to some destination or other known only to him and then returned in the same van, sans the deceased, whom he had described as 'tiada ada lagi' to SP3, when queried by SP3 as to the deceased's absence)? The only inference is that the person referred to as 'orang itu' by the accused is none other than the deceased, Muhamad Rafee.

[29] I accept as true not only that the accused had told SP4 that he had dumped ('telah humban') someone in Ulu Yam on 14 December 2001 but also make a finding of fact on the totality of the evidence at the conclusion of the trial that the accused had in fact dumped the deceased in Ulu Yam on 14 December 2001 because it is consistent with the deceased's not returning to the van with the accused, after the deceased's abduction and assault by the accused on the night of 14 December 2001 as well as the recovery of the deceased's body on 19 December 2001 at the bank of the lake at Ampangan Batu, Ulu Yam. I totally reject the accused's testimony as well as that of his witnesses that on 14 December 2001 he was in his home from morning till night and that he had not left his house at all that day.

[30] In the light of my finding that it was the accused who had dumped the deceased in Ulu Yam on the night of 14 December 2001, I have to determine whether all the injuries found on the deceased, as per the post-mortem report were in fact inflicted by the accused or any of the two persons at large with a common intention. On the totality of the evidence, I am unable to make a finding that the injuries caused with a sharp weapon were inflicted by the accused or any of the two unidentified persons still at large, with or without a common intention. However, on the evidence of SP3, I am satisfied the accused had assaulted the deceased (at least with his hands) at the time he dragged him into the van and whilst travelling into the van, before dropping off SP3 at the road junction. Although there may be grounds for suspecting that the accused could have inflicted the injuries, attributed to a sharp weapon, and, therefore had intention to kill the deceased, nevertheless, suspicion alone is not good enough to infer the requisite mens rea and find a person guilty of murder.

[31] On a balance of probabilities, I am satisfied that the accused did not intend to cause death but nevertheless knew, as any reasonable man ought to know that the act of dumping the deceased in Ulu Yam and leaving him there helpless on the night of 14 December 2001 after assaulting him was likely to cause death. In the circumstances, the accused is found guilty and convicted of culpable homicide not amounting to murder punishable under s 304(b) of the Penal Code.

[32] The accused had nothing to say in mitigation of sentence. The evidence adduced at the trial did not disclose any circumstances to warrant the accused not to

be given the maximum sentence permitted under the law. The accused was accordingly sentenced to 10 years imprisonment from the date of his arrest.

Accused sentenced to 10 years imprisonment.

Reported by Janani Suntharalingam